

# NEW MEXICO HIGHER EDUCATION DEPARTMENT



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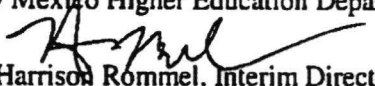
DR. BARBARA DAMRON  
CABINET SECRETARY

**Subject:** Northern New Mexico College  
Capital Project Audit

**Date:** October 1, 2015

**To:** Dr. Barbara Damron, Cabinet Secretary  
New Mexico Higher Education Department

**From:** Scott Eccles, Institutional Auditor  
Gerald Hoehne, Capital Projects Auditor  
New Mexico Higher Education Department

**Through:**   
Dr. Harrison Rommel, Interim Director of Institutional Finance  
New Mexico Higher Education Department

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## SECTION I – Background, Methodology, and Project Data

In accordance with State of New Mexico Statutes (Chapters 9 & 21), the New Mexico Higher Education Department's (HED) Institutional Finance Division conducted an audit of Northern New Mexico College's (NNMC) Montoya Building Renovation Project (MBRP). The audit was performed in order to determine the College's compliance with State Procurement Code, and to ensure that project costs reimbursed to-date are allowable, allocable, and adequately supported.

### Project Background

Pursuant to the 2013 "Work New Mexico Act", NNMC was legislatively authorized to receive proceeds from the sale and issuance of Severance Tax Bonds (STB) in the amount of \$900,000 to "plan, design, construct, renovate, expand, furnish and equip the Joseph M. Montoya building." NNMC divided the project into four renovation phases which include the following: Bookstore, Boardroom, President's Office, and Student Services. This appropriation has a reversion date of June 30, 2016. In addition, and as required by statute, the College received \$9,000 which represents the 1% portion of the appropriation designated for Art in Public Places (AIPP).

### Procurement Code Applicability

It is important to understand how State Procurement Code Statutes and State Procurement Code Regulations apply to NNMC and the MBRP bidding and award process. NNMC, as a constitutional school, does not fall under the authority of the State's General Services Department's (GSD) "Procurement Code Regulations" as defined in NMAC §1.4.1.2 (4). NNMC is therefore excluded from central purchasing through the state purchasing agent; however, the College is required to adhere to State "Procurement Code Statutes" at NMSA 1978 §§13-1-1 through 13-1-199 (Repl. Pamp. 2012). Historically, Institutions of Higher Education in New Mexico, which includes

constitutional schools, utilize Procurement Code Regulations as the guiding authority for all purchasing activities. These regulations were developed by the State Purchasing Division to support and clarify Procurement Code Statutes. Although Procurement Code Statutes and Procurement Code Regulations are both commonly referred to as the Procurement Code; in accordance with NMSA §13-1-28 and within this report, we will refer to State Procurement Code Statutes as the “State Procurement Code” or “Procurement Code”.

Effective July 1, 2013, and as a result of the passing of Senate Bill (SB) 443, NMSA §13-1-125(A) increased the threshold for “small purchases” to \$60,000 in order to streamline the procurement process by reducing the number of purchases subject to the formal bidding process. Changes applicable to the procurement of contractor services include:

- A direct purchase order can be issued to a contractor for projects under \$60,000 in cost (excluding state and local taxes) based upon the best obtainable price; and,
- Projects exceeding \$60,000 in cost (excluding state and local taxes) require utilization of the request for proposals (RFP) procurement process.

In addition to State Procurement Code, NNMC’s Purchasing Procedures for Construction are as follows:

- A direct purchase order can be issued to a contractor for projects under \$25,000 in cost (excluding state and local taxes) based upon the best obtainable price; and,
- Projects exceeding \$25,000 in cost (excluding state and local taxes) require utilization of the RFP procurement process.

Therefore, based upon NNMC’s Purchasing Procedures being more restrictive than the Procurement Code, the RFP process is required for all construction projects exceeding \$25,000 in cost.

### **Disclosures**

- As documented in NNMC’s fiscal year 2014 audit report, the College received an audit finding for initiating construction and expending bond funds on two capital projects prior to obtaining the required statutory approvals from HED’s Capital Project Committee and the State Board of Finance (SBOF). The MBRP was identified as being one of these projects and in order to avoid redundancy, although mentioned in the summary on page 11 of this report, the finding is not included within the scope of this audit; and,
- It was determined that NNMC constructed a new porch attached to the Montoya Building utilizing building renewal and replacement (BR&R) funds. Although this portion of work was not paid for with STB 13-1913 proceeds, the project is included within the scope of this audit as it was determined that a potential violation of State Procurement Code occurred that is linked to the purview of this audit.

### **Scope & Methodology**

To achieve the objectives, reviews of laws, rules, and regulations applicable to the State’s Institutions of Higher Education that are deemed to be “Constitutionals” were conducted. Reviews were also performed on NNMC’s policies and procedures regarding purchasing, signature authority, and conflicts of interest. Organizational charts were used to understand the College’s operational and reporting structures. Interviews were conducted with NNMC’s Vice President (VP) of Finance, Financial Services Director, Director of Facilities, Senior Financial Analyst, Accountant, Athletics Director, and Executive Administrative Assistant to assemble background

information and to obtain and verify documents and data. Site inspections were performed with HED's Capital Projects Coordinator in order to assess project work completed to-date. In addition, one-hundred percent (100%) of reimbursements submitted to-date by NNMC to the SBOF were tested for compliance.

Documents were also examined which include: Capital Project Transmittal Summary Sheet, Bids and Awards; Purchase Requisitions and Orders, Encumbrances, Project Timelines, Change Orders, Draw Requests, Expenditure Reports, Corporate Ownership Records, Officer's Meeting Minutes, and NNMC's five-year capital projects plan.

In addition, assessments of peer institutions were performed in order to define best practices specific to procurement, signature authorizations, conflicts of interest, and ethics.

### **Project Data**

The following chart summarizes to-date MBRP financial activity:

<b><u>Vendor</u></b>	<b><u>Project</u></b>	<b><u>Proposal Amount</u></b>	<b><u>Change Orders</u></b>	<b><u>Total Reimbursed to Date/SBOF</u></b>	<b><u>Difference</u></b>
<u>Blue Sky Builders</u>	<u>Bookstore Phase</u>	<u>\$208,721.94</u>	<u>\$54,906.51</u>	<u>\$271,708.97</u>	<u>\$8,080.52</u>
<u>CDW Government</u>	<u>Bookstore Phase</u>	<u>\$1,175.63</u>		<u>\$1,175.63</u>	<u>\$ -</u>
<u>Fat Catalog</u>	<u>Bookstore Phase</u>	<u>\$2,168.56</u>		<u>\$1,795.44</u>	<u>\$(373.12)</u>
<u>Retail Resource</u>	<u>Bookstore Phase</u>	<u>\$10,568.28</u>		<u>\$10,568.28</u>	<u>\$ -</u>
<u>Delancey Street</u>	<u>Bookstore Phase</u>	<u>\$2,415.42</u>		<u>\$1,250.31</u>	<u>\$(1,165.11)</u>
<u>4 Alarm Service</u>	<u>Bookstore Phase</u>	<u>\$2,574.84</u>		<u>\$2,535.36</u>	<u>\$ (39.48)</u>
<u>Sign Shop</u>	<u>Bookstore Phase</u>	<u>\$582.79</u>		<u>\$582.79</u>	<u>\$ -</u>
<u>Blue Sky Builders</u>	<u>Boardroom</u>	<u>\$17,824.02</u>		<u>\$17,824.02</u>	<u>\$ -</u>
<u>Sign Shop</u>	<u>Boardroom</u>	<u>\$2,415.93</u>		<u>\$2,415.93</u>	<u>\$ -</u>
<u>Metro 2000</u>	<u>Boardroom</u>	<u>\$2,690.45</u>		<u>\$2,690.45</u>	<u>\$ -</u>
<u>Chacon Builders</u>	<u>Boardroom</u>	<u>\$3,263.75</u>		<u>\$3,263.75</u>	<u>\$ -</u>
<u>Dominguez Carpet</u>	<u>Boardroom</u>	<u>\$14,815.51</u>		<u>\$14,562.76</u>	<u>\$ (252.75)</u>
<u>Consolidated Electrical Distribution</u>	<u>Boardroom</u>	<u>\$2,265.56</u>		<u>\$2,265.56</u>	<u>\$ -</u>
<u>Cooperative Educational Services</u>	<u>President's Office</u>	<u>\$57,041.53</u>	<u>\$ 3,241.96</u>	<u>\$59,866.51</u>	<u>\$ (416.98)</u>
	<b><u>TOTALS:</u></b>	<b><u>\$328,524.21</u></b>	<b><u>\$58,148.47</u></b>	<b><u>\$392,505.76</u></b>	<b><u>\$5,833.08</u></b>

**Porch Project** - This project consisted of the addition of a new porch attached to the west side of the Montoya Building. The project was constructed using BR&R funding (see disclosure section on page 2 of report). NNMC solicited and awarded the Porch Project to Blue Sky Builders (BSB) based upon an informal bid of \$24,690. No other quotes were obtained. Project work began in July of 2012 and was completed in August of 2012. No change orders were issued.

**Bookstore Phase** - This phase consisted of renovations to the Bookstore. NNMC solicited informal bids from BSB, Avanyu Construction Company (Avanyu), and Black Ridge Builders (Black Ridge). BSB was awarded the project based upon the submission of the lowest bid of \$208,722. Construction was initiated August of 2013 and completed November of 2013. Four change orders totaling \$54,906.51 were processed resulting in a final project cost of \$263,628.45. Change orders are as follows:

**Change Order #1:**

- Installation of hollow metal windows and pair of doors in existing television room (\$19,790); and,
- Replacement of ceramic tile including 8x8 logo (\$17,607).

**Change Order #2:**

- Upgrade of Bookstore cabinets (\$2,806);
- Abatement of asbestos in Bookstore (\$7,774); and,
- Retime of Hallway (\$12,209).

**Change Order #3:**

- Replacement of 8x8 logo (\$17,607);
- Television Room (\$19,790);
- Alternate Tax (\$1,066); and,
- Dutch Doors (\$1,734).

**Change Order # 4:**

- Disencumbered \$45,477.76 to correct duplicated items included within Change Orders # 1 and # 3.

**Boardroom Phase** – This phase consisted of renovations to the Boardroom. Informal bids were solicited and submitted by BSB (\$17,824), Chacon Builders (\$19,120), and Tewa Construction Company (\$36,149). This phase was awarded to BSB based upon submission of the lowest bid. Five additional service contracts/purchase orders were entered into with different vendors for additional work under this phase. Work was initiated in November of 2013 and completed in January of 2014. Final project cost was \$43,022.47.

**President's Office Remodel** – This phase encompassed replacement of hallway carpet and rotunda tile. As allowed by Procurement Code (13-1-135), NNMC utilized Cooperative Educational Services (CES), a non-profit purchasing cooperative that solicits bids and issues contracts on behalf of members. BSB, who became a statewide "registered bidder" with CES on December 1, 2013, was awarded this phase based upon the submittal of a formal bid in the amount of \$38,872.73. An additional service contract/purchase order was entered into with CES for the acquisition of office furniture. There was one change order processed in the amount of \$3,241.96 for additional ceramic tile in the president's restroom and the painting of an additional wall in the president's area. The phase was started March of 2014 and completed May 2014 with a final project cost of \$60,283.49.

**Student Services Phase** – At the pre-exit meeting held on August 26, 2015, NNMC informed HED that this phase requires the replacement and upgrade of the Heating, Ventilation, and Air Conditioning (HVAC) system along with



renovations to accommodate additional space for offices and student resources. Funding for the HVAC upgrade has become available through newly appropriated bond funds. This new funding, along with the balance of MBRP funds for classroom and office upgrades, will allow the needed renovation to be completed in a single phase. No funds have been expended or reimbursed to-date.

AIPP - No monies have been expended or reimbursed to-date.

#### MBRP Timeline

	July 13	Aug 13	Sept 13	Oct 13	Nov 13	Dec 13	Jan 14	Feb 14	Mrch14	Apr14	May 14	June 14
AIPP												
Bookstore		X	X	X	X							
Boardroom					X	X	X					
President's Office									X	X	X	
Student Services												

## **SECTION II – Audit Findings**

### **Finding No. 1 – Procurement Code Violation (Lack of Competitive Bidding Process)**

#### **Condition**

Reviews of project documents revealed NNMC solicited informal bids for the MBRP Bookstore Phase from three area general contractors instead of utilizing the competitive sealed bidding process required by both State Procurement Code and NNMC Purchasing Procedures. Bids were subsequently submitted by two of the three firms with the third deciding not to bid based upon other commitments. The College subsequently awarded the phase to BSB based upon the best obtainable price and subsequently entered into agreement on July 15, 2013 in the amount of \$208,722.

Contractor	BSB	Avanyu	Black Ridge
Bid Date	July 9, 2013	July 11, 2013	No Bid
Bid Amount	\$193,911	\$207,531	Not Applicable
Including GRT	\$208,722	\$210,000	Not Applicable

State Procurement Code requires awards be made through the competitive sealed bidding process for all construction projects exceeding \$60,000 in cost. In addition, it stipulates that a RFP procurement process be utilized in which projects are awarded based upon the requirements set forth and advertised in an invitation for bids. Evaluation criteria utilized for consideration may include weighted factors other than cost; such as project knowledge, skills, experience and prior performance.

In addition, NNMC's Purchasing Procedures have a more restrictive threshold. All projects exceeding \$25,000 in cost must be awarded based upon the RFP process.

Additional reviews revealed the awarded firm, BSB, was known by College officials to be partially owned by an employee of the college.

## **Criteria**

- According to NNMC Purchasing Procedures updated January 12, 2015: 7. Purchasing Policy, Regulations for Construction Include the Following: Construction over \$25,000, "Requestor must work with the Purchasing Department to obtain formal bids. Purchase Requisitions must be submitted for advertising in at least two general area newspapers. Formal bids must be submitted by the bidder to the Purchasing Department. Once an internal committee has been established, the bids are released to the committee for evaluation and selection."
- According to NMSA §13-1-105: "Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose." "The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids";
- NMSA §13-1-107: Competitive sealed bids; bid opening, states, "Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the state purchasing agent or central purchasing office, together with the name of each bidder, shall be recorded, and the record and each bid shall be open to public inspection."; and,
- NMSA §13-1-117: Competitive sealed proposals; award, "The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the state agency or a local public body, taking into consideration the evaluation factors set forth in the request for proposals."

## **Effects**

- Competitive sealed bid procurement process bypassed;
- NNMC in violation of State Procurement Code;
- NNMC in non-compliance with its own Purchasing Procedures;
- Procurement process lacks quality and integrity;
- Value of public funds potentially not maximized;
- Offers the appearance of malfeasance; and,
- Increased HED scrutiny over NNMC capital outlay procurement processes.

## **Cause**

The College previously eliminated their Capital Projects Director's position due to financial hardship and instead tasked five NNMC staff members with "managing all capital projects, capital budget monitoring and reporting, and any required interactions or presentations with the NMHED and State Board of Finance." The five staff members included "the Vice President for Finance and Administration, the Athletics Director, the Finance Director, the General Services Director and the Grants Accountant."

## **Recommendations**

- The College's Purchasing Agent, who was hired October 1, 2013, ensures all procurement activities at NNMC are performed in compliance with State Procurement Code and NNMC Purchasing Procedures; and,

- The College's Institutional Purchasing Policy and Purchasing Procedures specific to contractor procurement are broad in nature therefore lacking the detail required to ensure compliance with the State's complex Procurement Code. We therefore recommend they be rewritten, as it can no longer be assured based upon this audit finding that the current policies and procedures provide the level of controls necessary to ensure compliance.

### **Views of Responsible Officials and Management's Planned Corrective Actions**

Although written quotes were obtained for the construction project associated with this finding, at the time, it was believed that the contracted vendor was a qualified Cooperative Educational Services (CES) participant. Under normal circumstances, use of eligible CES vendors fulfills all state procurement requirements for the competitive sealed bidding process. Unfortunately, the College misinterpreted the CES status of the contracted vendor and agrees that we did not fully adhere to all procurement regulations.

The College has since 1) Hired a certified Purchasing Agent; 2) Instituted procurement training for faculty and staff coinciding with the beginning of the Fall and Spring Semesters that includes the various levels of responsibility pertaining to the bidding process as well as online access to instruction and procedures; and 3) Institutional procurement policies are currently being reviewed by the BOR in preparation for final adoption in January 2016.

### **Finding No. 2 – Procurement Code Violation (Unlawful Employee Participation)**

#### **Condition**

Review of project records revealed that the College's Executive Administrative Assistant was instructed to sign the two procurement documents specific to BSB. The Administrative Assistant authorized a purchase requisition for the Porch Project (\$24,690) and approved a contract (\$17,824) for the MBRP Boardroom Phase. Subsequent interviews were performed and it was determined that BSB is partially owned (10%) by the Administrative Assistant's spouse (mentioned in finding number one), who is also an employee of NNMC and an Officer (VP) of BSB.

As a result of the unlawful procurement participation and in order to ascertain whether: (a) A violation of NMSA §13-1-193 regarding prohibited contemporaneous employment occurred; and, (b) Whether a violation of the Governmental Conduct Act (NMSA 1978 §10-16-4.3 (Repl. Pamph. 2013)) concerning prohibited employment occurred; a formal response was requested from NNMC officials in order to determine whether the Administrative Assistant was employed by BSB during this time period. A reply was received on June 1, 2015 in which it was stated that the Assistant was employed by BSB from January through May of 2008, but has not been employed by the firm since that time.

#### **Criteria**

- According to NMSA §13-1-190, Unlawful Employee Participation Prohibited (A): "it is unlawful for any state agency or local public body employee, as defined in the Procurement Code {Sections 13-1-28 through 13-1-199 NMSA 1978}, to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract."
- NMSA §13-1-53: "Definition: direct or indirect participation, "Direct or indirect participation" means involvement through decision, approval, disapproval, recommendation, formulations of any part of a purchase request, influencing the content of any specification, investigations, auditing or the rendering of advice.";

- NMSA §13-1-57: "Definition: financial interest, financial interest means: (A) holding a position in a business as officer, director, trustee or partner or holding any position in management; or (B) ownership of more than five percent interest in a business."; and,
- NMSA §13-1-62: "Definition: immediate family, "Immediate family" means a spouse, children, parents, brothers and sisters."

### **Effects**

- NNMC in violation of Procurement Code;
- Procurement transactions authorized and approved by a non-designated staff member; and,
- Offers the appearance of malfeasance.

### **Cause**

Although aware that the Administrative Assistant's spouse was partial owner of BSB, a fiscal official of the College stated that on occasion, the Assistant has been instructed to sign documents in the official's absence. It was also stated that this practice has occurred approximately four times over a four-year period.

### **Recommendation**

Although having a staff member exercise authority during temporary absence is an understood and accepted practice, in accordance with NNMC Accountability Policies, the College official in question must exercise better judgement in order to avoid future violations of Procurement Code and the perception of malfeasance.

### **Views of Responsible Officials and Management's Planned Corrective Actions**

The Vice President for Finance and Administration normally signs all contracts and purchase requisitions over \$1,000 for departments under his area of responsibility. In limited circumstances, the Vice President has specifically directed his administrative assistant to sign documents on his behalf in his absence. This practice has only occurred approximately four times over his four-year tenure with NNMC.

The College, in response to the New Mexico Higher Education Department's (NMHED) initial inquiry, assigned signature authorization to Mr. Bernie Padilla, Human Resource Director, or Ms. Henrietta Trujillo, Finance Director, in the absence of the Vice President. The College is currently developing signature authorization protocol and forms for implementation in 2016. This will assist the College in the future transition to electronic signature authorizations.

## **SECTION III – Audit Concerns**

### **Concern No. 1 – Perceived Favoritism**

#### **Condition**

- As noted in finding number one, a firm (BSB) known to be partially owned by an employee of the college was awarded a phase of the MBRP (\$208,722) without the required competitive bidding process; and,
- As noted in finding number two, an employee of the college was instructed to participate in procurement activities involving a firm (BSB) in which the employee's spouse was known to have a financial interest.

A conflict of interest arises when a faculty or staff member is in a position to influence the business, research, or other decisions of the College in relationship to an outside organization in ways that could lead directly or indirectly to financial gain for the faculty or staff member or the family of the faculty or staff member, or give improper advantage to others to the detriment of the College. Favoritism is defined as a display of partiality toward a favored person or group. Although it could be perceived a conflict of interest existed due to the nature of findings one and two, the results of audit work revealed:

- The College did not violate the State's Governmental Public Notice Disclosure Rules when it awarded the Bookstore Phase based upon the employee being a "non-substantial owner" of BSB (less than 20% ownership); and,
- The College did not violate the State's Governmental Conflict of Interest Rules based upon the fact that the employee owner or Administrative Assistant were not in a position or level within the organization to influence procurement activities.

No evidence was obtained during the course of the audit that would substantiate lack of disclosure or conflict of interest violations occurred. However, although minimal, it is possible another contractor, not originally solicited by NNMC, could have submitted a responsive bid lower than that of BSB. Based upon this, the impression of favoritism, although potentially not factual, is notable.

#### **Recommendations**

- Although research revealed BSB is a reputable firm known to have completed numerous quality construction projects throughout the state, based upon the principles defined within the State's Governmental Conduct Act, ("full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct"), we recommend NNMC's President meet with College fiscal officials to remind them of their professional responsibilities and duties to ensure full compliance with Procurement Code and NNMC Purchasing Procedures; and,
- Although the Governmental Conduct Act does not prohibit employees from doing business with the College, the Act (NMSA §10-16-4.2) does require employees to disclose in writing all employment engaged by the employee other than employment with the College. Although it was determined that the employee owner of BSB disclosed ownership to College officials (resume) prior to being hired, NNMC does not maintain a formal process that requires staff to report outside employment (on a periodic basis) in order to avoid conflicts of interest, favoritism, ethics violations, and the appearance or potential appearance of malfeasance. We therefore recommend the College's Board of Regents adopts an annual "Employee Conflict of Interest Disclosure Statement" that identifies outside employment of staff, and defines parameters regarding conflict of interests and ethical conduct.

#### **Views of Responsible Officials and Management's Planned Corrective Actions**

As noted in the report, the College did not violate the State's Governmental Public Notice Disclosure Rules or the State's Governmental Conflict of Interest Rules. The College does, however, want to ensure that all vendors are afforded an opportunity to submit a bid for consideration. Despite the College's practice of utilizing State Pricing Agreements or CES for all construction projects, obtaining responses from regional vendors is sometimes a challenge. In these situations the perception of favoritism may be unavoidable. For this reason, it has been a



practice of the College to discuss all construction projects at the BOR's monthly Facilities and Finance Committee meetings.

## **Concern #2 – No Formal Signature Authority Designations**

### **Condition**

As a result of finding number two and the subsequent review performed to define NNMC's signature authority process, it was determined that although the College has the following policies in place that define the responsibilities of individuals who are authorized to process business and administrative transactions, no formal designations have ever been made:

- According to NNMC's Board of Regent's Policies & Procedures, Section 2000, Responsibility and Accountability for College Information and Transactions; (2) Deans, Directors, and Department Heads: "Deans, directors, and department heads define designated individuals in their organizations who are authorized to process business and administrative transactions"; and,
- According to NNMC Accountability Policies: "department heads are responsible for exercising good judgment, upholding ethical standards, and should have internal procedures in place to ensure periodic review of designations and related training."

### **Recommendation**

The College needs to establish and maintain a current list of staff members who are designated to authorize and/or approve business and fiscal documents. This should also include secondary designees whom are allowed to sign in the absence of primary designees. In addition, it is important to ensure historical records of designations are maintained in the event they are needed for verification purposes. To define best practices, we encourage reviews be conducted on the signature authority processes being utilized by peer institutions.

### **Views of Responsible Officials and Management's Planned Corrective Actions**

The College, as indicated in response to Finding No. 2, assigned signature authority authorization to Mr. Bernie Padilla, Human Resource Director, or Ms. Henrietta Trujillo, Finance Director, in the absence of the Vice President. The College is currently developing signature authorization protocol and forms for implementation in 2016 which will also assist in the future transition to electronic signature authorizations.

## **Concern No. 3 – Multiple Informal Quotes Required**

### **Condition**

Examination of procurement documents revealed NNMC solicited an informal bid and subsequently awarded the Porch Project to BSB in the amount of \$24,690. NNMC Purchasing Procedures allow for a direct purchase order to be issued to a contractor based upon the best obtainable price.

### **Recommendation**

Although the new porch is not considered to be a major project (\$24,690) and the cost appears to be reasonable in nature, an employee does have a financial interest in BSB, and in accordance with NNMC Purchasing Procedures for

Construction under \$25,000, we suggest the College obtains additional quote(s) to document that the best price is obtained and to avoid any appearance of malfeasance.

#### **Views of Responsible Officials and Management's Planned Corrective Actions**

The College, as a matter of practice, attempts to utilize State Pricing Agreements or CES for all construction projects. Under normal circumstances, use of either entity fulfills all state procurement requirements for the competitive sealed bidding process so long as a vendor is on their approved vendor list. In order to maximize available funding the College will attempt to obtain multiple quotes to document that the best price is obtained.

#### **Concern No. 4 – Verification of MBRP Balance**

##### **Condition**

Based upon the project accounting documents provided to auditors, the remaining balance available to NNMC is misstated by \$5,833 (see page three of this report), thereby decreasing the remaining funds available for the Student Services Phase by that same amount.

##### **Recommendation**

We recommend NNMC fiscal staff perform a forensic review of all to-date MBRP accounting transactions and subsequently meet with HED and SBOF staff for review and disposition.

#### **Views of Responsible Officials and Management's Planned Corrective Actions**

The College Finance Department is currently auditing all requests for reimbursement associated with the Montoya Building Renovation Project to ensure that the requests indeed balance to the invoices paid. The audit will be completed by Thursday, October 15, 2015, and the results will be forwarded to NMHED.

### **SECTION IV – Summary of Findings, Conclusions and Comments**

#### **Summary of MBRP Findings**

- NNMC expended bond funds prior to obtaining the required HED and SBOF approvals;
- Awarded a contract to a firm known to be partially owned by an employee of the College without utilizing the required formal bidding process; and,
- Instructed an employee to participate in procurement activities involving a firm known to be partially owned by the employee's spouse.

#### **Conclusions**

**Procurement Objective** - The facts reveal NNMC's policies specific to contractor procurement are inadequate in content and were bypassed as noted in findings one and two. In addition, the lack of a capital projects staff member or consultant who has the level of technical expertise required to manage major projects with multiple phases further exacerbated an already weak control system.

**Allowability of Costs Objective** - Regarding the objective to determine whether bond reimbursements made to-date are allowable, allocable, and adequately supported, the results of field work performed reveal the College has substantially complied with applicable requirements.

**Comments**

NNMC officials need to ensure that all procurements are conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, and that all qualified vendors have access to public business.

The State Procurement Code was developed to provide fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.









NNMC personnel should clearly understand and demonstrate certain competencies in this area on a daily basis and should be well informed about conflicts of interest. Management must conduct itself in a manner that justifies the confidence placed in them by taxpayers, at all times maintaining the integrity and discharging ethically the high level of responsibilities. Nothing undermines confidence more than a real or perceived violation of public trust.

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Domingo Sanchez, NNMC VP of Finance  
Andrew Romero, NNMC Facilities Director  
Henrietta Trujillo, NNMC Financial Services Director  
Alexandra Williams, NNMC Senior Financial Analyst  
Tammy Salter, NNMC Purchasing Agent

## Emails, with attachments, received re: Northern New Mexico College

### Emails received from a community member and investigator between 2015 and 2017:

 Samuel LeDoux Documents--Domingo	 FW IPRA Request.msg	 David Schutz.msg	 Bernie Padilla & Police Reports.msg	 RE Bernie Padilla & Police Reports.msg	 No Jury Duty Next Week.msg
 RE No Jury Duty Next Week.msg	 FW Work Product From Last Wednesday	 FW Update to the NNMC Presidential Search	 FW Northern New Mexico College President	 FW My Thanks and Important Meeting	 Untitled.msg
 Jon Paul Romero at NNMC Jon Paul Romero	 Untitled.msg	 RGS on ex-NNMC HR Director Bernie Padilla	 El Rito as Legal Site of NNMC.msg	 NNMC History--College Dissolution	 Nick Salazar's Legislative Memorial
 Tarin Nix Voter Research Inc. LinkedIn	 Tarin Nix Austin Post Bushee.msg	 FW VDP ITAV NNMC Chayo Nexus.msg	 FW Valley Daily Post It Takes a Valley NNM	 SVJ Community Forum 3 12 16.msg	 FW IPRA Request.msg
 NNMC Foundation Ricky Serna Liddie Ma	 FYI NNMC Presidential Search Act	 Domingo's Resume.msg	 FW Required Publication of Notices	 Rio Grande Sun on Presidential Finalists	 Whistleblower Settlement.msg
 Upcoming Presidential Search Event	 FW Hacked Donald Martinez E-Mails.msg	 FW Qualifications Job Description NNMC	 FW Former High-Ranking NNMC	 FW Response to your request for privacy	 FW Required Publication of Notices
 FW NNMC Presidential Selection	 FW Good Statement.msg	 FW Required Publication of Notices	 FW Advisory Teams.msg	 FW RE Northern New Mexico College	 Qualifications Job Description NNMC President
 Required Publication of Notices re Presidential	 FW Sociedad Venceslao Jaramillo	 FW Domingo & College of Santa Fe	 Whistleblower Case Mediation.msg	 FW NNMC Presidential Selection to	 Documents Related Domingo Employment
 Sociedad Venceslao Jaramillo.msg	 FW IPRA Request.msg	 RGS on Missed NNMC Fed DOE Grant	 RGS on Jacques-NNMC Settlement	 Journal on Barney Trujillo Nick Salazar	 NNMC Provost VP Pedro Martinez Remo
 FW IPRA Request.msg	 Annette Rodriguez Receives FOG's Dixon	 RE Annette Rodriguez Receives FOG	 RE Annette Rodriguez Receives FOG	 RE Annette Rodriguez Receives FOG	 Pedro's Employment Legal Issue in NC 200
 Dr Ricky Bailey Resume CV.msg	 Attorney Peter Dwyer's New Affiliation	 RE Letter.msg	 RE Letter.msg	 Letter to Donald Arrived--No Problems	 Basham Law Firm NNMC Billing Documents
 FW Sociedad Venceslao Jaramillo	 NNMC Attorney Billing Documents.msg	 Student Regent NNMC Gov Martinez	 RE Student Regent NNMC Gov Martinez	 Errors in Memo re NNMC BOR Terms of	 RE Errors in Memo NNMC BOR Terms

 NNMC Whistleblower Settlements.msg  
 FYI Journal on Barney Annabelle Jess  
 RGS on Jessica Barney.msg  
 Fwd SVJ Comments to NNMC BOR.msg  
 FW SVJ Comments to NNMC BOR.msg  
 FW IPRA Response Letter.msg  
 FW IPRA Request.msg  
 FW IPRA Request.msg

#### 2016-0173 Emails from a contractor:

 NNMC invoices.msg  
 Fwd Follow up from Friday's mtg re NNMCcontract 2015-2016.m  
 Fwd NNMC - AFSC

#### 2016-0197 Emails received from a former member of the NNMC Executive Team:

 Fw Pictures of the Greenhouse at El Rito  
 Fw Pictures of the Greenhouse at El Rito  
 E-mails from me expressing concerns :  
 Other Equipment.msg  
 oivil Rights Violation.msg  
 Re Other Equipment.msg  
 Re Other Equipment.msg  
 Re oivil Rights Violation.msg  
 Conspiracy to Commit Fraud with Tit

#### Emails received from a former employee and community member:

  
 Automotive building  
 at NNMC Espanola Ci

#### Emails re: law enforcement referral:

  
 RE Northern New  
 Mexico College.msg

#### Other information from whistleblowers:

 Complaint Filed Against NNMC.msg  
 State audit of NNMC.msg  
 RE State audit of NNMC.msg

#### Financial reports:

  
 6 months of financial reports.msg

#### Former employee:





RE Your Misconduct While on NNMC Campus May 11 2016.msg



Fwd Corrections to Rodriguez Correspondence (5).msg



Fwd IPRA Response to Jan 4 2016 Requests.msg



Fwd NNMC Public Records Inspection.msg



Fwd Response Letter to April 4 2016 Correspondence.msg



Fwd Your Misconduct While on NNMC Campus May 11 2016 (2).msg



Fwd Your Misconduct While on NNMC Campus May 11 2016.msg



NNMC Continued Violations of NM IPRA.msg



Northern New Mexico College.msg



Re IPRA Response to the January 4 2016 Requests - Employee Compensation (15).msg



Re Northern New Mexico College (6).msg



Re Northern New Mexico College (8).msg



Re Northern New Mexico College.msg



Charges of Criminal Trespass during Inspection of Public Records Appointment NM IPRA Requests attached.msg



Fwd Corrections to Rodriguez Correspondence.msg



Fwd NNMC Public Records Inspection (4).msg



Fwd Public Records Request NNMC Capital Project Audit by NMHED 10 15.msg



Fwd Your Misconduct While on NNMC Campus May 11 2016 (1).msg



Fwd Your Misconduct While on NNMC Campus May 11 2016 (3).msg



Fwd Your Recent IPRA Correspondence - Requests for Clarification.msg



NNMC Public Records Inspection.msg



NNMC.msg



Re Corrections to Rodriguez Correspondence.msg



Re NNMC.msg



Re Northern New Mexico College (7).msg



Re Northern New Mexico College (9).msg

## N.M. Const. Art XII

**Sec. 13. [Board of regents for educational institutions.]**

A. The legislature shall provide for the control and management of each of the institutions, except the university of New Mexico, by a **board of regents** for each institution, consisting of five members, four of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the institution and no more than three of whom at the time of their appointment shall be members of the same political party; provided, however, that the student body member provision in this subsection shall not apply to the New Mexico school for the deaf, the New Mexico military institute or the New Mexico school for the blind and visually impaired, and for each of those three institutions all five members of the **board of regents** shall be qualified electors of the state of New Mexico.

B. The **governor shall nominate and by and with the consent of the senate shall appoint the members of each board of regents for each of the institutions.** The terms of nonstudent members shall be for staggered terms of six years, and the terms of student members shall be two years.

C. The governor shall select, with the advice and consent of the senate, a student member from a list provided by the president of the institution. In making the list, the president of the institution shall give due consideration to the recommendations of the student body president of the institution. Following the approval by the voters of this 2014 amendment and upon the first vacancy of a position on the northern New Mexico state school **board of regents**, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term.

D. The legislature shall provide for the control and management of the university of New Mexico by a **board of regents** consisting of seven members, six of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the university of New Mexico and no more than four of whom at the time of their appointment shall be members of the same political party. The governor shall nominate and by and with the consent of the senate shall appoint the members of the **board of regents**. The present five members shall serve out their present terms. The two additional members shall be appointed in 1987 for terms of six years. Following the approval by the voters of this amendment and upon the first vacancy of a position held by a nonstudent member on the university of New Mexico's **board of regents**, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term. The governor shall select, with the advice and consent of the senate, a student member from a list provided by the president of the university of New Mexico. In making the list, the president of the university of New Mexico shall give due consideration to the recommendations of the student body president of the university.

E. Members of the **board** shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the **board** under such rules as it may promulgate, and its decision in connection with such matters shall be final. (As amended September 20, 1949, effective January 1, 1950, November 4, 1986, November 8, 1994 and November 4, 2014.)



# Fired NNMC director may get more money

By T. S. Last / Journal Staff Writer

Published: Friday, June 23rd, 2017 at 12:02am  
Updated: Thursday, June 22nd, 2017 at 9:34pm

SANTA FE, N.M. — A jury's decision in May to award a former Northern New Mexico College employee nearly \$420,000 in a lawsuit filed under the Whistleblower Protection Act could exceed more than \$1 million when all is said and done.

Last week, Santa Fe District Court Judge Francis J. Mathew doubled the \$239,451 portion of the award that the jury allocated to cover Melissa Velasquez's loss of wages after she was fired in 2014.

With interest, the total judgment against Northern in the Velasquez case — only the latest in a series of costly lawsuits brought by former employees of the Española-based college — is now \$676,402, says Mathew's written order.

The award total also includes \$180,000 that the jury provided for emotional distress suffered by Velasquez, former director of Northern's El Rito campus, who says she was dismissed after reporting waste, fraud and abuse of federal grant money.

But the cost for the four-year school will go still higher in the case. Mathew said Velasquez also can recover "litigation costs and reasonable attorney's fees in an amount to be determined" by the judge.

Two days after the judge increased the award, Velasquez's attorney Christopher Moody filed a series of motions that could add another \$434,000 owed by the college, including \$200,245 in attorney's fees.

Velasquez had worked at the college for two years before she was appointed El Rito campus director in November 2011 under former NNMC president Nancy "Rusty" Barceló. Velasquez's lawsuit claimed she was demoted to the position of coordinator of continuing education at the school's main campus in Española after she reported financial abuses.

She also said she reported to at least three top-ranking administrators her suspicion that two college employees not under her supervision were getting drunk on the job, but nothing was done about it. The college later blamed her for a "failure to address this problem as a pretext to eliminate her from a supervisory role," her lawsuit alleged.

The college can still appeal the jury's original ruling in Velasquez's favor.

Mark Komer, the attorney representing the college, said Thursday a decision on whether to appeal won't be made until after Judge Mathew rules on the latest set of motions. He declined to comment on the decision by the jury or the judge.

In one new motion, Velasquez is asking to be reinstated at the college and also asks the court to make NNMC pay more if it doesn't take her back.

"Should the Court deny reinstatement as infeasible, Plaintiff (Velasquez) seeks an award of front pay for a reasonable period of time to afford her the opportunity to secure alternative substantially equivalent employment," the motion states.

"Based on her fruitless job search over two years and ten months from the termination date to the time of trial, it is logical to infer that it will likely take her an additional two years to secure suitable employment," it continues. "Plaintiff should therefore be awarded her lost compensation for an

additional two years.” Based on the pay rate she was receiving, two years worth of salary and benefits totals \$169,000, according to the motion.

In addition, Moody filed motions to include more than \$11,000 in gross receipts taxes and interest on the back pay at a rate of 15 percent, another \$36,000.

Moody did not return a phone call from the Journal on Thursday.

According to the court filings, NNMC is opposing all the motions, except the one seeking attorney’s fees.

Velasquez claimed she was fired after she took various complaints – about malfeasance by college regents, mistreatment of females at the college, and the waste, fraud and abuse in grant programs – to Gov. Susana Martinez, the Higher Education Department and the state Auditor’s Office.

The college claimed she was let go as part of a “reduction in force” due to a financial crunch. Most, if not all, administrators she levied the allegations against are no longer employed by the college.

Velasquez’s suit is one of four whistleblower cases filed against NNMC claiming retaliation in recent years, but the only one that went to trial.

Last year, the college settled two complaints totaling \$540,000. A third was settled earlier this year, but the amount of the settlement won’t become public record for at least another month.

The state’s Risk Management Division paid a total of \$222,500 in the settlements reached with former assistant professor James Biggs and ex-Information Technology director Angelo Jacquez, leaving the college on the hook for \$317,500. It’s unclear how much Risk Management will pay in the case of Patricia Perea, who coordinated the college’s summer bridge program and settled with the college in January, or in Velasquez’s case.

A call from the Journal to the division was not returned Thursday.

Current NNMC President Rick Bailey Jr. also could not be reached. He’s been on the job for less than a year and inherited a financial mess.

The college started falling behind on audits in 2010 and was later placed on a watch list by the U.S. Department of Education. Its use of federal grant money also came under scrutiny by the Department of Education and the state’s Higher Education Department. Budgetary problems led to a tuition hike in 2013, the layoff of about 20 employees and cuts in trade programs at the El Rito campus.

Earlier this year, the state Auditor’s Office released reports finding financial irregularities, including the theft of \$200,000, which led to the resignation of the head of the college’s business office and the potential misuse of 744 hours of unapproved leave by former college president Barceló, amounting to about \$87,000, not including taxes and benefits.

**Contact the writer.**



[http://www.riograndesun.com/opinion/editorials/northern-audit-leaves-many-questions-unanswered/article\\_face4bc0-1ae5-11e7-be92-afb0e41a6499.html](http://www.riograndesun.com/opinion/editorials/northern-audit-leaves-many-questions-unanswered/article_face4bc0-1ae5-11e7-be92-afb0e41a6499.html)

## Northern Audit Leaves Many Questions Unanswered

By Robert Trapp Apr 6, 2017

The release Monday of Northern New Mexico College's 2016 audit almost makes the \$200,000 theft a minor part of an institution's total lack of oversight by regents, administrators or department heads. It is clear from the 145 page report that the inmates were running the asylum.

We have acknowledged and lauded the financial skills of Northern New Mexico College's Domingo Sanchez. He's headed that department for many years, while surrounded with an array of questionable administrators, nepotism-prone leaders and misogynistic department heads. It's now clear he was either complicit in some of the audit's 37 findings, was incompetent or simply doing a terrible job as vice president of finance.

Almost every finding falls at his feet. And since the Board of Regents made him interim president for much of the time period audited, he and the regents must own all the findings.



Northern President Rick Bailey has accomplished a lot of human resources house-cleaning and the audit is from before he took over. It's easy to blame past leaders who have moved on or have been moved on. Bailey is tackling the problem, cooperating with the state auditor and not deflecting any blame.

The audit gives a nasty glimpse into the Nancy Barcelo/Ricky Serna/Domingo Sanchez/Bernie Padilla years. Talk about complicit.

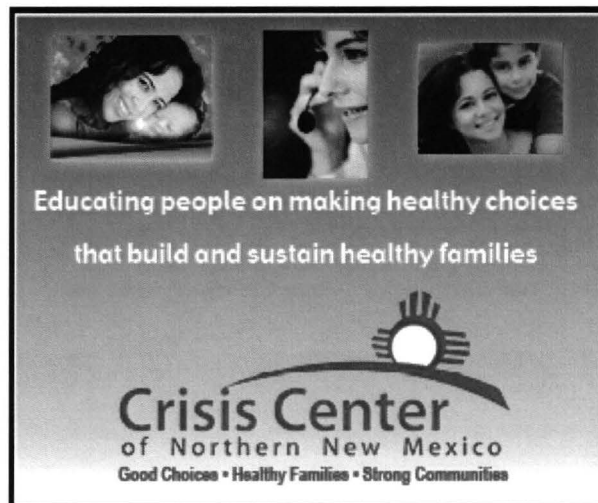
The sexy findings of course are the theft, Barcelo's abuse of time off and speaking tour stipends, procurement violations and a total lack of financial statement reconciliations. But the meat and potatoes of the audit are the boring details. The Board of Regents and the former administration had no idea that a) policies were not in place to prevent fraud and abuse or b) the policies that were in place were not being followed nor enforced.

Fraud and abuse was going on in many different departments in many different ways. Petty cash not being reconciled, suspense funds not being closed, payroll tax errors, deposits not making it to the bank and stale checks being held for long periods of time are a few examples of audit findings. The public surely wants to know who is supposed to be overseeing these processes and what policy was/is in place to prevent such abuse or theft.

Why is the College paying a lease for four years on five credit card machines not in use? While the cost is \$10,679 (relatively small), it's indicative of a bigger problem: someone just not doing their job. Who was looking at that minor, but unnecessary, expense monthly and ignoring it? It also begs the question, how many other small oversights are we paying for?

The Board of Regents has few duties and two are vital to Northern's success. The first is fiscal management. This audit clearly shows they failed miserably in that duty. Regents' second duty is to set policy for the administration to execute. The audit is replete with examples of no policy, outdated policy or policy not being followed/enforced.

Bailey has knowingly stepped onto a sinking ship and is bailing water, while helping to row. You have to respect him for that (or label him a madman). At the March 30 state of the College address he warned the audit would be thorough, and lay bare many sins. That was an understatement.



He's been very open, accommodating and has quite actively engaged the communities vested in the College. We just don't know how much longer he'll be able to keep some of the old staff from Barcelo's reign. This could be the death knell for some of them. We can hope.

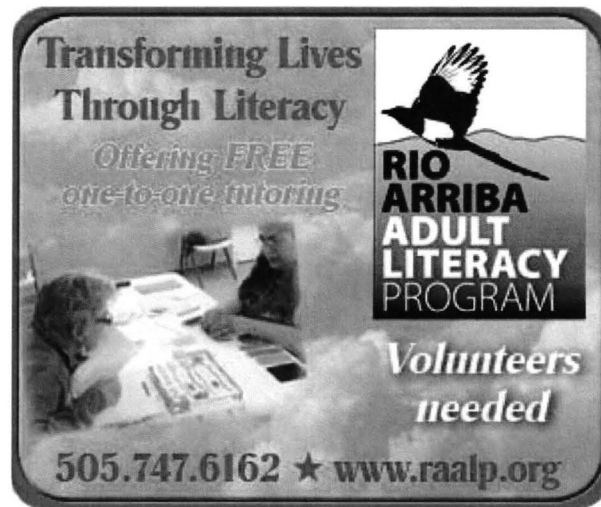
The glaring problem Bailey cannot address is a Board of Regents who must believe showing up at a meeting, voting for miscellaneous agenda items and cashing their per diem check is the totality of the job. They all owe the teachers, students, taxpayers and the community a, public apology. They have failed in their duties in a huge way.

How can Gov. Susana Martinez appoint and then the senate confirm the appointment of Northern President Rosario Garcia? She has overseen the Board of Regents and Northern through four of the worst years of the college's history. The College's decline under her hand should have stopped the governor.

How can the governor in good faith, with eyes wide open, politics aside, reappoint any of them?

Since our governor won't put politics aside in the interest of the College, our hope now is Garcia and the other Regents responsible for Northern's current state will stay out of Bailey's way as he goes about setting things right. He has many huge tasks ahead of him that will require much help from department heads and worker bees in the trenches.

We don't envy them and wish them all well.



# Finance VP at Northern NM College is retiring

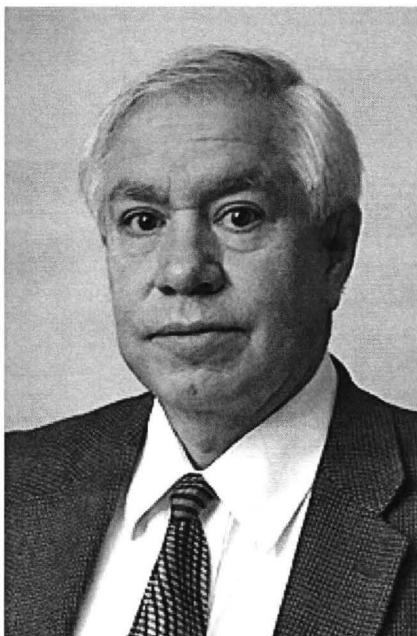
By T.S. Last/Journal North

Published: Wednesday, May 10th, 2017 at 7:09pm  
Updated: Wednesday, May 10th, 2017 at 9:40pm

SANTA FE – Northern New Mexico College's vice president for finance and administration has announced his retirement effective June 30.

Domingo Sanchez III submitted a letter of resignation last Friday, according to NNMCC President Rick Bailey Jr.

The announcement comes weeks after an audit of the college's finances overseen by the State Auditor's Office identified numerous serious findings, including contracts being awarded without going out to bid, a runaway legal services contract, missing computers and theft of more than \$200,000 by the college's financial director, who has since resigned.



Domingo Sanchez

But Bailey, who began serving as college president in October, didn't blame Sanchez for the outcome of the audit. "Domingo did a lot of good things for the college," Bailey said. "He was responsible for getting this college into the black financially. He was instrumental in getting us caught up after years of missed audits, and he helped the college tighten its belt in ways that had he not done that, the state's current budget crisis would be far more devastating."

Sanchez did not return a phone message from the **Journal** on Tuesday.

Sanchez has been a polarizing figure since he was hired in February 2011 to help clean up a financial mess at the college with campuses in Española and El Rito that had fallen years behind on audits. He was at the center of controversy over job layoffs and program cuts under former college president Nancy "Rusty" Barceló. He was among those cited when in the spring of 2014 when students and faculty members voted "no confidence" in the college's leadership.

Sanchez, who was interim NNMC president from December 2015 after Barceló announced her retirement until Bailey was hired, has also been named in whistleblower complaints filed by ex-employees of the college charging retaliation, including one in which a jury last week awarded more than \$400,000 to the plaintiff. Two other cases were settled last year for more than \$500,000. The amount of a third settlement from December has not been made public.

Jake Arnold, executive director of La Sociedad Venceslao Jaramillo, an advocacy group primarily made up of El Rito residents, welcomed Sanchez's departure. "I think this change is long overdue," he said, noting that Barceló and two other former high-level administrators also are no longer there. "The swamp is nearly drained now, but there is still a little clean up that needs to occur. But we're confident Rick Bailey can accomplish that. He's made an immense difference at the college in just seven months."

**Contact the writer.**



**OFFICE OF THE STATE AUDITOR**  
**Special Investigations Division**  
**Case Closure Form**

Assigned To: Guadalupe Jaramillo / Hamish Thomson *NOV 04, 2017*  
Agency Code: 963  
Tracking Number #: 2015-0246, 2016-0173, 2016-0197  
Agency Name: Northern New Mexico College  
NetClaim Report #: 122114973  
Date Received: September 16, 2015

This case to be considered closed due to:

- ☐ Special Investigation/Audit completed  
☒ Case has been referred to prosecution  
    ☐ Prosecuted  
    ☐ Declined  
  
☒ Case was referred to IPA or Oversight entity, response received follow up is complete  
  
☐ Not in Special Investigation Division's purview  
    ☐ Private entity  
    ☐ No fraud, waste or abuse of financial resources  
    ☐ Referred to OSA Government Accountability Office  
    ☐ Referred to OSA Constituent Communications  
    ☐ Referred to external entity (no follow up required)  
  
☐ Statute of limitations has run  
  
☐ Other (Please detail work performed and results and justification for closure in narrative section)  
    ☐ No credible allegations  
    ☐ Inactivity / lack of information  
    ☐ Other (see narrative)

***Final Correspondence***

- ☒ NetClaim outgoing language  
☒ Official letter

***Administrative***

- ☒ File review and clean up (ensure signed copies of letters are included, drafts are removed, organize news articles, supporting documents, source documents and work papers)  
☒ Close in NetClaim  
☒ Close in tracking log  
☒ Complete file and archive



### ***Description:***

The OSA researched multiple allegations received between 2013 and early 2017 some of which related to events dating back to 2011. During the course of the OSA's fact finding NNMC experienced a change in leadership and hired a new President, Dr. Richard Bailey, through a nationwide search process.

In addition to learning more about the issues from whistleblowers, the OSA met with those charged with governance, executive management and community members. The OSA formally wrote to oversight agencies and the Independent Public Accountant responsible for auditing NNMC's financial statements. These efforts culminated in uncovering a potential misappropriation of funds by the former Finance Director which is the subject of Case 2017-028.

#### 2015-0246, Netclaim 122114973:

The OSA received an anonymous hotline report on September 16, 2015 stating that since 2013 they have reported the illegal use of grant funds at NNMC. The reported individual is Domingo Sanchez, Chief Financial Officer ("CFO") at NNMC.

A caller call back, dated September 30, 2015, states that there is a video showing the CFO removing items from the bookstore after hours. The bookstore manager allegedly considered this action theft since those items were part of inventory and were missing and reported the matter to the Higher Education Department ("HED").

On October 28, 2015 the OSA, via NetClaim, asked the caller to provide additional information about the video i.e. date, time, missing items, and subsequent actions by and on behalf of NNMC. While the OSA never received a copy of this video we did receive multiple other allegations, contained in case files 1-7 (see index), drawing our attention to whistleblowers, lawsuits, criminal complaints and other actions taken by executive staff against employees.

The OSA interviewed and received information from two interested community members and subsequently received, on November 25, 2015 a "White Paper" from fourteen members of the Sociedad Venceslao Jaramillo. This letter, along with the whistleblower complaints, formed the primary basis for additional inquiry and fact finding in fiscal year 2016.

On December 11, 2015 the OSA received, from a complainant, a scanned copy of an HED "Capital Project Audit" dated October 1, 2015. The HED report states that the Institutional Finance Division conducted an audit of the NNMC's Montoya Building Renovation Project to determine compliance with the State Procurement Code. The procurement and other issues identified in this report confirmed the concerns which had been brought to our attention and heightened the OSA's scrutiny of NNMC. Prior to December 11, 2015 OSA staff had requested a copy of this report from HED and their lack of responsiveness increased our concerns. While this audit report has a cc to State Auditor Keller, the OSA has no record of its receipt on or around October 1, 2015.

#### 2016-0173

The OSA received information on August 16, 2016, after writing to the Independent Public Accountant ("IPA") for NNMC on August 12, 2016, stating that NNMC violated a contract agreement with a non-profit regarding the use of college facilities and provision of a training program for students. This information was provided telephonically to the IPA on September 30, 2016 at their check-in regarding our referral.

#### 2016-0197

The OSA received information on August 25, 2016, and on subsequent dates through January 9, 2017, from a member of the NNMC Executive Team with concerns about contracts, grants, equipment and multiple personnel matters. While many of these issues related to personnel matters and others mirrored concerns already brought to our attention there are other allegations dated January 9, 2017 of a conspiracy between the former President, former Vice President for Finance and former Vice President for Advancement.

#### ***Procedures:***

#### Previous OSA cases:

The OSA, after receiving a netclaim report in September 2015 which referenced referrals to the OSA in 2013, researched the hotline reporting for any related closed cases. The OSA found three such cases. The information in these hotline reports were incorporated into this case file:

<b>Report Number</b>	<b>Dated Filed</b>	<b>Date Closed</b>	<b>Description</b>
120074016	August 7, 2014.	December 31, 2014 March 5, 2015 (NetClaim)	Alleged a no-bid agreement between NNMC and Monument, LLC for around \$13 - \$16 million and refusal by NNMC to provide related documentation under an IPRA request
118518309	September 3, 2013.	December 31, 2014 March 5, 2015 (NetClaim)	Alleged funding to be used for the El Rito Campus was used for the Española Campus and closure of various trades programs. Referrals to the IPA, NM HED, and LFC are referenced in the closure report. NNMC was placed on the OSA "At-Risk" list.
118518309	August 30, 2013	December 16, 2014 (NetClaim)	Alleged misuse of student grant money by the Department Chair of the Automotive Technology Department; a copy of an audit 14-PL-03, dated January 30, 2014 is contained in the file and was performed by the NMDOT with finding related to three Professional Service Agreements: CO4868, CO5350, and CO5514.

These allegations were directed towards the former President, the former Vice President of Finance and Administration, a former Provost and a former Department Chair.

#### Prior Year Audits:

Three of eight findings in the audit report for fiscal year 2014 related to Material Weaknesses

- 2009-022 Budgetary Comparisons
- 2013-001 Bank Reconciliations – Timeliness – College
- 2013-002 Bank Reconciliations – Timeliness – Foundation

Two other findings in the audit report for fiscal year 2014 related to Significant Deficiencies

- 2013-003 Capital Assets – Physical Inventory Not Reconciled to the General Ledger

- 2014-003 Expended funds on Capital Projects before required approval obtained

In fiscal year 2015 the two material weaknesses were:

- 2013-002 Bank Reconciliations – Timeliness – Foundation
- 2015-002 Accounting for Restrictions of Net Position

The three significant deficiencies in FY 2015 were:

- 2009-022 Budgetary Comparisons
- 2013-003 Capital Assets – Physical Inventory Not Reconciled to the General Ledger
- 2015-003 Time and Effort Certifications

The NNMC bank reconciliations were a finding but not a significant deficiency.

The audit opinion in fiscal year 2016 was disclaimed with 37 findings. Twenty of the deficiencies in internal controls were material weaknesses:

2013-001	Bank reconciliations – Timeliness and Review Process
2013-002	Bank reconciliations – Timeliness and Review Process - Foundation
2016-002	Potential Fraud, Forgery, Embezzlement, Larceny and Non-Compliance
2016-003	Insufficient Attention and Accountability over Accounting and Internal Controls
2016-004	Insufficient Security of Accounting Records/Backup of Electronic Documents
2016-005	Procurement Code Violations
2016-006	Segregation of Duties
2016-007	Financial Close and Reporting
2016-008	Lack of Internal Controls over Cash Receipts Process
2016-009	Lack of Internal Controls over Cash Disbursements and Transfers Process
2016-010	Lack of Internal Controls over Journal Entries
2016-012	Transfers, Disposals, and Tracking of Inventory Items less than \$5,000
2016-016	Inadequate Controls over Sabbatical and Annual Leave
2016-018	Lack of Monitoring and Corrective Actions
2016-019	Lack of Established Practices for the Identification, Mitigation and Monitoring of Risks
2016-022	Petty Cash – Security and Tracking
2016-026	Assigned Permissions in Banner
2016-027	Information Technology (Other)
2016-030	Reconciliation of Student Financial Aid Disbursements
2016-032	Lack of Complete Policies and Procedures

There were an additional ten significant deficiencies:

2013-003	Capital Assets – Physical Inventory Certification & Safeguarding
2013-007	Disaster Recovery Plan and Password Policies
2016-017	Outdated Policies and Procedures
2016-020	Bank Reconciliations – Stale Dated Checks
2016-021	Review and Clean-Up of Clearing and Suspense and Accounts
2016-023	Underreported Payroll Tax Liabilities
2016-024	Unused Credit Card Machines and Related Monthly Fee
2016-025	Reconciliation of Student Accounts Receivable
2016-028	Tracking of Banner Feeds to Ensure Feeds are not Suspended / Deleted
2016-031	Controls over Recording Paid Time-Off to Federal Grants

There were seven other compliance findings:

2015-001	Travel and Per Diem
2016-001	Late Audit Report
2016-011	New Mexico State Constitution Violation – Board Member Vacancy
2016-013	Public Money Act Violation – Deposits Not Made Within 24 Hours
2016-014	Non-Compliance with and Inadequate Controls over the Governmental Conduct Act
2016-015	New Mexico Prehistoric and Historic Sites Preservations Act Violation
2016-029	Compliance Violation – Ant-Donation Clause of the New Mexico Constitution

#### Media and internet research:

The OSA researched the Internet to find news articles that would or could be relevant to the case. A search was also done in connection to Monument, LLC an Indiana company contracted to study the feasibility of constructing dormitories.

A web search did not provide any recent news articles relevant to the case. An article by Rio Grande SUN, dated October 15, 2015, reported how Northern's Associate Vice-President for Finance and Administration/Director of Human Resources Bernie Padilla was placed on administrative leave.

Another article by The New Mexican, dated September 23, 2015, narrated how Northern's President, Nancy Barceló, plans to retire June 30, 2016. Barceló will be retiring one year before her contract is to end but the board "honored its contractual commitment to a one-year sabbatical commencing July 1, 2016 with an option for Barceló to return as a tenured professor."

The search for Monument, LLC directed us to their website <http://monumentllc.net>. This company is based in Indianapolis, Indiana. The company is focused on construction but also provides consulting work and support services.

While researching Monument, LLC the OSA came across a website pertaining to the Northern New Mexico College Study Group <http://www.nnmcstudygroup.org/monument-llc.html>. Through this website, we accessed a blog, media, budget, letters, and information about Monument, LLC. The blog section contains a notice of a special Board Meeting dated September 21, 2015. The media section contained news articles as early as April 8, 2011 to the most recent article dated August 27, 2015. The budget section contained financial statements for 2010 through 2013, a spreadsheet titled "Rise in Administrative Salaries", and a 2014 Moral Budget Proposal. The Monument, LLC section contained the Development Agreement between Monument, LLC and NNMC, invoices from Monument, LLC for 2014, a Rental Comparison Analysis Summary by Monument, LLC, and selected payment sheets for payments to Monument, LLC.

An article from the Rio Grande Sun, dated May 12, 2016, describes how the College missed the deadline to a grant. This article states that the College submitted their application two minutes late and risks losing their funding. The 5-year grant allegedly totals more than \$2 million and was used to provide recruiting services, financial aid counseling, career workshops, and other services for students.

According to an article in the Rio Grande Sun, the pool for the next president was down to five finalists as of March 24, 2016. Those finalists include Richard Bailey, Catherine Martinez Berryhill, Andres Salazar, Domingo Sanchez (acting President), and Vincent Flores. The College had a pool of 25 applicants for the position. On April 28, 2016 the NNMC Board of Regents chose Richard Bailey as the new President of the College for a one-year, \$175,000 contract with a start date in October.

An Albuquerque Journal article dated June 23<sup>rd</sup>, 2017 "Fired NNMC director may get more money" states, quoting the judge, that the total amount paid out due to lawsuits brought by former employees is \$676,402.

There are multiple other, more recent, media articles.

#### NM Courts:

The OSA identified and obtained documents from, with the assistance of former employees and community members, multiple whistleblower and other cases against the College. These cases include:

D-117-CV-201400038	Northern New Mexico Federation of Educational Employees, an affiliate of AFT-NM v. NNMC
D-117-CV-201400218	James Biggs v. NNMC
D-117-CV-201400278	Angelo Jacques v. NNMC
D-117-CV-201500094	Patricia Perea v. NNMC
D-117-CV-201500169	Melissa Velasquez v. NNMC
D-117-CV-201500359	Monument LLC v. NNMC et al.

#### Agency Records and Higher Education Department ("HED") Oversight:

On January 29, 2016 we obtained copies, through the finance staff, of NNMC's six month financials submitted to HED. Enrollment was down by nearly 20% between fall 2014 and fall 2015 but appears more stable through spring 2016.

#### Other OSA procedures:

The OSA took multiple investigative steps to address the allegations, both directly and indirectly. On June 8, 2016 the OSA met with Interim President Domingo Sanchez III at NNMC. Present at this meeting were the Finance Director, financial analyst and other member of the finance team. The OSA then met with Rosario "Chayo" Garcia and Kevin Powers from the NNMC Board of Regents and later that same day with community members in El Rito associated with El Rito Sociedad Venceslao Jaramillo.

The OSA took the following steps, including a referral to the Independent Public Accountant ("IPA"):

August 10, 2016	Letter from the OSA to the State Historian
August 11, 2016	Letter from the OSA to the Governor
August 12, 2016	Letter from the OSA to the Board of Regents
August 12, 2016	Letter from the OSA to the Director of NM State Parks
August 12, 2016	Letter from the OSA to Dr. Richard Bailey



August 12, 2016	Letter from the OSA to the IPA
August 25, 2016	Response letter from NM State Parks
November 14, 2016	Letter from NNMC Board President to the OSA
January 26, 2017	IPA follow-up letter regarding the OSA referral
February 27, 2017	NNMC notify the OSA of potential embezzlement
March 1, 2017	OSA refer allegations to the prosecutor and law enforcement
March 27, 2017	IPA response to the OSA referral
March 31, 2017	Letter to President Bailey regarding the FY 2016 financial audit.
August 4, 2017	Approval of a Consulting Services Contract
September 19, 2017	Approval of an amendment to the Consulting Services Contract
September 21, 2017	U.S. Department of Education letter to NNMC copied to the OSA

### ***Analysis:***

Many of the whistleblower and other allegations related to the former Vice President for Institutional Advancement who attempted unsuccessfully, after a rebuttal dated July 30, 2015, to remove the NNMC Study Group Blog from the internet on July 15, 2015. Included in the allegations received by the OSA was a forwarded email (dated a few days before divorce proceeding were commenced in April 2014) from his wife. Some of the allegations in the email thread relate to the Foundation where the former Vice President's Aunt is on the Board. Finding 2016-002 in the fiscal year 2016 audit relates to the Foundation.

During our investigation, which included the Office requiring enhanced procedures by the IPA related to cash reconciliations, the following administrative changes in the executive staff took place:

- Former President was replaced, after an extensive national search, by current President Rick Bailey, Jr.
- Interim President, Vice President and former Chief Financial Officer retired and has been replaced.
- Former Vice President for Institutional Advancement left and is now the Interim President of Luna Community College. His publicly available LinkedIn profile identifies him as a "Corporate Trainer ... Gambling and Casinos."
- Former Director of Human Resources took a new position with the North Central Solid Waste Authority before retiring. There is a new Human Resources Director.
- There is a new Provost.
- Former Finance Director resigned amidst allegations of embezzlement and fraud.

The IPA provided a detailed response to the OSA referral and the subsequent audit report was disclaimed with 37 findings, many of which are directly related to the issues the OSA brought to their attention. This report can be found on our website [osanm.org](http://osanm.org) using a search for Northern New Mexico College, entity number 963.

The Office requested that the FY 2016 IPA perform enhanced procedures focused on the bank reconciliation. As a result the Finance Director resigned with what appears to be an admission of asset misappropriation. These allegations of potential embezzlement were forwarded to Marco Serna, 1<sup>st</sup> Judicial District Attorney and to Captain Dale Wagoner at New Mexico State Police in case 2017-0028.

***Recommendation:***

Closure with a referral to the IPA regarding heightened risks at the Foundation.

The alleged embezzlement was referred to the District Attorney and law enforcement and is addressed in more detail in case 2017-0028.

***Follow up:***

In addition to reviewing the fiscal year 2017 audit for corrective actions taken by management in response to the prior year findings, the Office is receiving regular updates from NNMC.

***Closure Language:***

2015-0246    Netclaims:

Thank you for contacting the New Mexico Office of the State Auditor (OSA). The OSA conducted fact finding which included meeting with community members, staff and members of the Board. The OSA requested that the independent public accountant conducting the fiscal year 2016 annual audit for Northern New Mexico College, and other relevant agencies, assess these concerns. The auditors found multiple problems, including potential embezzlement, which caused them to disclaim their audit opinion. This report, with all 37 findings, can be found on the OSA's website [osanm.org](http://osanm.org) using a search for Northern New Mexico College or agency 963. Again, thank you for contacting the OSA and bringing these concerns to our attention.

2016-0173    Email:


Thank you for providing the New Mexico Office of the State Auditor (OSA) with information and concerns relevant to Northern New Mexico College. The OSA's fact finding had previously included meeting with community members, staff and members of the Board. The OSA requested that the independent public accountant conducting the fiscal year 2016 annual audit for Northern New Mexico College assess these matters. The auditors found multiple problems, including potential embezzlement, which caused them to disclaim their audit opinion. This report, with all 37 findings, can be found on the OSA's website [osanm.org](http://osanm.org) using a search for Northern New Mexico College or agency 963. Again, thank you for providing the OSA with relevant information.

2016-0197    Email:

Thank you for contacting, between August 25, 2016 and January 9, 2017, the New Mexico Office of the State Auditor (OSA). The OSA had previously met, in June 2017, with community members, executive staff and members of the Board. Subsequently the OSA requested, on August 12, 2017, that the independent public accountant conducting the fiscal year 2016 annual audit for Northern New Mexico College assess multiple matters brought to our attention by numerous whistleblowers and interested community members. The auditors found multiple problems, including potential embezzlement, which caused them to disclaim their audit opinion. This report, with all 37 findings, can be found on the OSA's website [osanm.org](http://osanm.org) using a search for Northern New Mexico College or agency 963. Again, thank you for contacting the OSA and bringing these concerns to our attention.



Reviewed by:

  
\_\_\_\_\_

Date:

10/10/17

Executive Management:

  
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Date:

10/10/17